



Billing Code 4310–55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2013–N049; 1112–0000–81440–F2]

**Kelley-McDonough Low-Effect Habitat Conservation Plan for the Morro
Shoulderband Snail, Community of Los Osos, San Luis Obispo County, California**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from John Kelley and Denise McDonough for a 10-year incidental take permit under the Endangered Species Act of 1973, as amended. The application addresses the potential for “take” of the federally endangered Morro shoulderband snail that is likely to occur incidental to the construction, maintenance, and occupation of a single-family residence on an existing legal single-family-zoned parcel in the unincorporated community of Los Osos, San Luis Obispo County, California. The applicants would implement a conservation program to minimize and mitigate project activities that are

likely to result in take of the Morro shoulderband snail as described in their plan. We invite comments from the public on the application package that includes the Kelley-McDonough Low-Effect Habitat Conservation Plan for the Morro Shoulderband Snail. This proposed action has been determined to be eligible for a Categorical Exclusion under the National Environmental Policy Act of 1969, as amended (NEPA).

DATES: To ensure consideration, please send your written comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may download a copy of the habitat conservation plan, draft environmental action statement and low-effect screening form, and related documents on the internet at <http://www.fws.gov/ventura/>, or you may request copies of the documents by U.S. mail or phone (see below). Please address written comments to Diane K. Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. You may alternatively send comments by facsimile to 805–644–3958.

FOR FURTHER INFORMATION CONTACT: Julie M. Vanderwier, Fish and Wildlife Biologist, at the above address or by calling 805–644–1766.

SUPPLEMENTARY INFORMATION:

Background

The Morro shoulderband snail (=banded dune snail; *Helminthoglypta walkeriana*) was listed by the Service as endangered on December 15, 1994 (59 FR 64613). Section 9 of the Act and its implementing regulations (16 U.S.C. 1531 *et seq.*) prohibit the take of fish or wildlife species listed as endangered or threatened. “Take” is defined under the Act to include the following activities: “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the Act as take that is not the purpose of carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are provided in the Code of Federal Regulations at 50 CFR 17.32 and 17.22. Issuance of an incidental take permit must not jeopardize the existence of federally listed fish, wildlife, or plant species.

John Kelley and Denise McDonough (hereafter, the applicants) have submitted a low-effect habitat conservation plan (HCP) in support of their application for an incidental take permit (ITP) to address take of Morro shoulderband snail that is likely to occur as the result of direct impacts to up to 0.18 acre (8,000 square feet) of highly disturbed habitat invaded by nonnative species that is occupied by the species. Take would be associated with the construction, maintenance, and occupation of a single-family residence on an existing parcel legally described as County of San Luis Obispo Assessor Parcel Number 074-471-002 and located at 2285 Bay Vista Lane in western portion of Los Osos, an unincorporated community of San Luis Obispo County, California. The applicants are requesting a permit for take of Morro shoulderband snail that would result from HCP “covered activities,” which include the construction,

maintenance, and occupation of a single-family residence and associated landscaping/infrastructure.

The applicants propose to minimize and mitigate take of Morro shoulderband snail associated with the covered activities by fully implementing the HCP. The following measures would be implemented to minimize the effects of the taking: (1) Pre-construction and concurrent construction monitoring surveys for Morro shoulderband snail would be conducted, (2) all identified individuals of any life stage of Morro shoulderband snail would be captured and moved out of harm's way to a Service-approved receptor site by an individual in possession of a current valid recovery permit for the species, and (3) a contractor and employee training program for Morro shoulderband snail would be developed and presented. To mitigate for unavoidable take, the applicants would contribute \$4,000 to an impact-directed environmental account held and administered by the National Fish and Wildlife Foundation. These funds would be used to implement recovery tasks identified in the *Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, California* (USFWS 1998). The applicants would fund up to \$4,000, as needed, to ensure implementation of all of the minimization measures and reporting requirements identified in the HCP.

In the proposed HCP, the applicants consider two alternatives to the proposed action: "No Action" and "Project Design." Under the "No Action" alternative, an ITP for the Kelley-McDonough single-family residence would not be issued. The Kelley-McDonough single-family residence would not be built, and a contribution of in-lieu fees would not be provided to effect recovery actions for the Morro shoulderband

snail. Since the property is privately owned, there are ongoing economic considerations associated with continued ownership without use, including payment of associated taxes. The sale of this property for purposes other than the identified activity is not considered economically feasible. Because of economic considerations and because the proposed action results in a net benefit for the covered species, Morro shoulderband snail, the No Action Alternative has been rejected.

Under the “Project Redesign” alternative, the project would be redesigned to avoid or further reduce take of Morro shoulderband snail. The onsite habitats occupied by Morro shoulderband snail are highly degraded in nature, and the parcel is not of sufficient size to accommodate a redesign that would substantially improve the conservation benefit to the species beyond what would be achieved in the proposed project. For these reasons, the alternate design alternative has also been rejected.

We are requesting comments on our preliminary determination that the applicants’ proposal will have a minor or negligible effect on the Morro shoulderband snail and that the plan qualifies as a low-effect HCP as defined by our Habitat Conservation Planning Handbook (November 1996). We base our determinations on three criteria: (1) Implementation of the proposed project as described in the HCP would result in minor or negligible effects on federally listed, proposed, and/or candidate species and their habitats; (2) implementation of the HCP would result in minor negligible effects on other environmental values or resources; and (3) HCP impacts, considered together with those of other past, present, and reasonably foreseeable future

projects, would not result in cumulatively significant effects. In our analysis of these criteria, we have made a preliminary determination that the approval of the HCP and issuance of an ITP qualify for categorical exclusion under the NEPA (42 U.S.C. 4321 *et seq.*), as provided by the Department of Interior Manual (516 DM 2 Appendix 2 and 516 DM 8); however, based upon our review of public comments that we receive in response to this notice, this preliminary determination may be revised.

Next Steps

We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether issuance of the ITP would comply with section 7(a)(2) of the Act by conducting an intra-Service Section 7 consultation.

Public Review

We provide this notice under section 10(c) of the Act and the NEPA public involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We are requesting comments on our determination that the applicants' proposal will have a minor or negligible effect on the Morro shoulderband snail and that the plan qualifies as a low-effect HCP. We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will use the results of our internal Service consultation, in combination with the above findings, in our final analysis to determine whether to issue the permits. If the requirements are met, we will issue an ITP to the applicants for the

incidental take of Morro shoulderband snail. We will make the final permit decision no sooner than 30 days after the date of this notice.

Public Comments

If you wish to comment on the permit applications, plans, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: February 27, 2013

Diane K. Noda, Field Supervisor,

Ventura Fish and Wildlife Office.

Ventura, California

**[FR Doc. 2013-05237 Filed 03/05/2013 at 8:45 am; Publication Date:
03/06/2013]**